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Possible Implications of the Constitutional Treaty for the EU Foreign and Security Policy – An Irish Perspective

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This paper analyses the articles relating to foreign and defence policy in the draft EU constitutional treaty. The paper outlines the main issues at hand, and gives an Irish perspective on the challenges ahead.

A foreign minister without a policy?

In foreign policy, the main innovation of the draft EU constitution is the idea of establishing a new post of EU 'minister for foreign affairs'. The basic idea is to merge the roles of Javier Solana, the High Representative for foreign policy, and Chris Patten, the Commissioner for external relations. Such a reform should ensure that in future the two arms of EU external relations – broadly, diplomacy and aid – work better together. Creating an EU foreign policy suprema to promote European interests around the world should make a difference. The draft makes clear that the new foreign minister would be a member of the Commission but an agent of the Council of Ministers, whose meetings on foreign affairs he or she would chair. The main centre of gravity of his activities would lie within the Council of Ministers. The EU minister for foreign affairs would be answerable to – and get his mandate from – his fellow foreign ministers, not fellow Commissioners. The crucial question about EU foreign policy is, who takes the decisions? The answer is national governments, acting by unanimity in the Council of Ministers and the European Council.

The draft does not extend the Commission's powers over foreign policy and it explicitly preserves every country's right to wield a veto. The maintenance of this veto right is superficially appealing but in reality a huge obstacle for a more credible EU foreign policy. At the beginning of 2003, the vast majority of EU member-states – including the UK, France and Germany – indicated that they could accept more majority voting on foreign policy. However, the UK subsequently back-tracked on this position and, regrettably, the draft retains the unanimity principle. Thus a veto from a single country – such as Malta, Luxembourg or Cyprus – could block an effective EU joint action. The conservative reflex to insist on unanimity is a pity. Countries like Britain should remember that if majority voting had applied when most countries wanted to ban Zimbabwean President Robert Mugabe from visiting Europe, France would not have been able to wield its veto. The preservation of the unanimity rule is a recipe for EU inaction.

Ideally, majority voting should apply to all foreign policy questions. But, to allay the concerns of London and other capitals, a compromise would allow

the unanimity principle could, perhaps, remain in place for proposals coming from the member-states. On the other hand, the governments should accept that proposals from the EU's foreign minister would be subject to a 'qualified majority vote' (meaning a double majority of member-states representing 60 per cent of the EU's population).

As a balancing move, member-states should retain the right to veto decisions in exceptional circumstances, for matters of 'supreme national importance'. But any government that invoked this 'emergency brake' would have to explain its motives to the European Council. The aim of this compromise proposal would be to strengthen the role of the EU's foreign minister and speed up decision-making. However, unanimity should always apply for decisions with military consequences.

One last-minute – and potentially very significant – change involved an agreement to create an 'EU diplomatic service'. The idea is to follow on from the proposed merger of the jobs of Chris Patten and Javier Solana and make sure that officials 'downstream' work better together as well. After laborious negotiations, the Convention has agreed details for a new diplomatic corps consisting of officials from the Council, the Commission and national diplomatic services – all working for the new EU foreign minister.

Enhancing EU foreign policy - An Irish perspective

The Irish government is happy with the idea of merging the roles of the Commissioner for External Affairs and the High Representative, as long as it does not lead to a 'communitisation' of EU foreign policy (meaning the Commission would have full competence for EU foreign policy).¹ Moreover, the Irish government would like to see the new foreign policy figure to have more resources, such as money, and for member-states to pool more of their diplomatic resources – such as embassies – in support of EU foreign policy. The Irish government also proposed that the new EU foreign minister should have some deputies, who would cover regional or functional themes, i.e. a deputy foreign minister with responsibility for Africa, or a deputy for defence policy.²

The Irish government is less happy with the proposal that the new EU foreign minister would chair the foreign ministers council. This potentially powerful new post comes with little accountability – the new foreign minister would not be bound by scrutiny from the European Parliament for example. Furthermore, Ireland would prefer to see the foreign ministers council chaired by member-states by equal rotation – as is the case in the current system. The draft constitution proposes that each sectoral council – industry, agriculture etc. – should elect its own chairman for at least one year, although

¹ For a synopsis of the Irish position at the Convention, see "Annual Address by the Minister for Foreign Affairs", a speech by the Irish Foreign Minister, Brian Cowen, to the Institute of European Affairs in Dublin, January 15, 2003. Available at <http://www.iiea.com/keynotes/20030115-cowen.html>

² For more on the case for a defence deputy, see Daniel Keohane, 'Time for Mr. ESDP?', in "New Designs for Europe", Centre for European Reform, October 2002.

it does not specify how this system of rotation would work. Several countries back the idea of creating 'team presidencies'. This system would have groups of states chairing different council formations for a set period, perhaps 2.5 years. For example, the German farming minister might chair the agriculture council, but a Czech minister could chair the industry council, while a Finnish minister would chair the meetings of interior ministers. Ireland would like to see the foreign ministers council subject to the same 'team presidency' arrangement. However, this is not a 'red line' by which the Irish government would threaten to veto the constitution, and it is almost certain that the new EU foreign minister will chair the foreign ministers council.³

In keeping with the general mood amongst EU member-states after the split over the Iraq war, the Irish government is conservative about losing its veto by extending majority voting to foreign policy voting. However, there is recognition in the Irish debate, that a stronger and more effective EU foreign policy is good for Ireland.⁴ Not only could a move to majority voting help make a more effective EU foreign policy a reality, it would also help ensure that the EU is not sidelined on major international issues by the larger member-states. The threat of majority voting would be a major incentive for member-states to reach agreement on EU positions. Without majority voting, the danger for smaller member-states is that they will have no influence at all on major international issues if the EU is sidelined, as it was over Iraq.

Defence in the draft EU constitution

The most controversial articles dealing with defence policy in Giscard's text would allow smaller groups of member-states to co-operate more closely on military matters. Given that EU countries have very different military capabilities, closer co-operation amongst a smaller group of states makes sense in principle as it could do much to improve the EU's overall military effectiveness. Aside from the much-documented transatlantic gap, there is also a large capabilities gulf between EU member-states – a gulf that will widen with the accession of 10 new members in 2004.

To overcome this gap, the Convention's draft proposes that an *avant-garde* group of states with higher-level capabilities and a willingness to carry out the most demanding tasks should be able to collaborate more closely. Closer co-operation in the defence field by a smaller group of member-states is called 'structured co-operation' in EU jargon. The draft does not give specific details, but 'structured co-operation' would probably involve harmonising military planning and pooling existing capabilities. Member-states could also choose (but would not be obliged) to sign up to a mutual defence clause, which would allow an EU country that comes under external attack to ask for military help

³ The other exception to the 'team presidency' rule for the different ministerial councils is the Eurogroup (eurozone finance ministers) who, like the foreign ministers, will have a permanent figure – a 'Mr. Eurozone' – who will chair their council for a set period of 2.5 years.

⁴ For example see "Should Ireland surrender its veto on foreign policy? Yes or No", an Irish Times debate between Ben Tonra and Aengus O Snodaigh, *The Irish Times*, March 6, 2003.

from other members. In essence, this pledge is similar to NATO's article V commitment.⁵

However, the protocol listing the participating states and the criteria for participating in 'structured co-operation' is not yet available, thus the implications of this article are very unclear – for example it could mean that Belgium, France, Germany, and Luxembourg would go ahead with their proposals of April 29th, thereby setting certain military standards for the other members to reach, which could exclude some states from joining the group. As yet, there is no minimum number of states as there is for normal enhanced co-operation (one-third of member-states). But in the July 8th draft of Part III of the EU constitution – the structured co-operation article (III-208) has a new clause that says "the appropriate provisions relating to enhanced cooperation shall apply to the structured cooperation governed by this article". One interpretation of this could be that enhanced co-operation procedures – such as a minimum of one-third of member-states – would be required to proceed with a defence group. And all member-states would have to agree to setting up a defence group before the participating states could move ahead. Moreover, a clause in the enhanced cooperation section of Part III (III-318) that said enhanced cooperation does not apply to defence was crossed out, so perhaps there will be some reconciliation of the differences between structured and enhanced co-operation in the final version of the EU constitution.

In its present form, in the draft constitution, 'structured co-operation' is different from other forms of enhanced co-operation in another way: only those states already participating decide if a member-state can join later if it asks to join. (The same is not true if a member-state wishes to sign up to the mutual defence commitment.) This is different to regular enhanced co-operation as the Commission (or the Foreign Minister for CFSP) would give their evaluation first, and that evaluation would form the basis for a decision by the Council of Ministers. The "those already in decide" principle already applies in the case of OCCAR - the four-country procurement agency - which some perceive as a way of keeping the non-producer (and less militarily capable) small countries from having a say in that field.

As for deploying troops, then all EU member-states decide – but de facto (especially for higher-intensity missions) those states participating in 'structured co-operation' would surely form the core of any EU military coalition. Only those states in the military coalition make the operational decisions – this principle is not new as it is already the case for Union missions that only those who participate can make decisions affecting the operation. The main difference is that for high-intensity tasks it is more likely the 'structured co-operation' group would be asked to carry them out – and that is where this group would look and act like a permanent defence core group – especially if all the same countries sign the mutual defence clause (Article I-40) – rather than having different military coalitions for different

⁵ The mutual defence pledge in the draft EU constitution is also similar to the promise contained in the now-forgotten Brussels treaty of 1948, signed by 10 EU members, which obliges them to defend each other in case of attack

missions. In other words, if a member-state do not participate in 'structured co-operation', then it would be hard for it to have much influence over EU defence policy.

In the aftermath of the Iraq war, the idea of an *avant-garde* for EU defence has taken on a highly politicised meaning as well as a practical one. Shortly after the fall of Baghdad, Belgium, backed by France, Germany and Luxembourg – who all opposed the Iraq war – hosted a mini-summit on April 29th to agree on proposals to develop ESDP. The four countries agreed that they should form the core of a "European defence union". After all, neither the euro, nor the Schengen agreement on common borders, would have come about without the leadership of an *avant-garde* group of states. Participating countries in the "European defence union" would commit to defending each other from external attack, set up a European military headquarters, and pool some of their military resources.⁶

Some EU countries with strong transatlantic ties, including the UK, the Netherlands and some of the accession states, argue that the EU does not need a mutual defence commitment since NATO already provides adequate defence guarantees. Those countries were also uneasy about 'structured co-operation' if it meant that Belgium, France, Germany and Luxembourg would go ahead and form a "European Defence Union".

However, since the Berlin meeting of Blair, Chirac and Schroeder, the British position has changed. The UK will accept 'structured co-operation' in principle, as long as all member-states agree unanimously before a smaller group can move ahead with closer co-operation. The UK will also agree to an EU mutual defence commitment, as long as the text says that any mutual defence mission would be carried out by NATO, not the EU. The UK will not agree to a new EU military headquarters, but has proposed that the EU should have its own 'cell' at NATO headquarters. However in an effort to reach a compromise with France and Germany on EU defence – who remain wedded to the idea of an EU military headquarters – the UK might consider beefing up the number of planners in the existing EU military staff.

A new 'capabilities agency' is also proposed in the constitution, tasked with encouraging the member-states to boost their military capabilities – in fact it is supposed to operational as soon as January 2004. The 'capabilities agency' would build on the work of existing institutions such as OCCAR and agreements like the "Letter of Intent", which are trying to bring about more the efficient management of multinational armaments programmes, although only some EU members participate.⁷ The new agency would work on harmonising

⁶ European Defence Meeting: Conclusions, Meeting of the heads of state and government of Germany, France, Luxembourg and Belgium, Brussels, April 29 2003.

⁷ OCCAR is a four-country defence procurement agency (France, Germany, Italy, the UK) that manages multinational equipment projects. The Letter of Intent agreement was signed in 1998 by the six major European arms-producing countries to harmonise some defence market regulations. For more see: Daniel Keohane, "The EU and armaments co-operation", *Centre for European Reform*, December 2002.

military requirements, co-ordinating defence R&D, and encouraging the convergence of national procurement procedures.

Because of the highly charged atmosphere after the Iraq war at the Convention, much less attention was paid to what security tasks the EU should be able to perform. For internal security the Convention text proposes that the EU adopt a “solidarity” clause. This clause would guarantee mutual assistance – including military aid – in case of a natural disaster or a terrorist attack on EU territory, but not in the case of an attack by an external state. Although seemingly innocuous in political terms, a “solidarity” clause is highly ambitious in practical terms because terrorist attacks are more likely than a Russian invasion. EU leaders are right to focus on the common threat of terrorism, but they should also be wary of raising expectations they cannot yet meet. To fulfil such a commitment, at a minimum the EU would need to be able to co-ordinate soldiers, policemen and emergency response services across borders and create a high-level intelligence body.⁸

For external security the so-called ‘Petersberg tasks’ set the parameters for EU military missions, which range from humanitarian relief to ending regional conflicts, and the draft constitution does not add very much to this list. However, there is a debate about Javier Solana’s June 2003 “Security Strategy” document, which will be finalized in December 2003. The “Security Strategy” argues that the EU should develop the organisation and capabilities to combat threats like terrorism and the spread of weapons of mass destruction (WMD), which are not covered by the Petersberg tasks.

The defence articles – An Irish perspective

Politically, the most challenging issue facing non-aligned countries (Austria, Finland, Ireland, and Sweden) is the mutual defence clause, whereby some member-states can sign up to a common defence commitment if they wish to. EU members would not be forced to sign to the clause, and non-aligned countries are unlikely to do so at this stage. In fact Ireland would have to hold a referendum on whether or not to join an EU military alliance before the government could do so – this was part of the ‘deal’ offered to the Irish public by the government before the second Nice referendum in 2002.

Regardless, there remains the question of what the longer-term implications of a mutual defence clause is for the development of ESDP. For example, if the same countries participate in ‘structured co-operation’ and have signed up to the defence clause, this not only makes the argument for an EU military structure more compelling politically, but it would prove to be a *de facto* “European Defence Union”. If that were the case, then countries outside the defence union, would have much less (and sometimes perhaps none) influence over EU defence policy. (The analogy to those states outside the euro and the Schengen agreement is a worthy one.)

⁸ See Adam Townsend, “Guarding Europe”, *Centre for European Reform*, May 2003.

However, even if a non-aligned government did decide that its country should join a European Defence Union, currently they would have to consider NATO membership as well – a fact that would be likely to greatly complicate public debates on that issue. NATO membership is a de facto prerequisite for entry into any European defence union as long as the EU depends on NATO assets. Since this is likely for the foreseeable future – even if the EU governments agreed to set up a small operational headquarters – the US would strongly object to a country joining an EU defence union and not NATO. This is because countries in an EU military alliance and not in NATO would effectively benefit from NATO assets, but they would not have to meet the commitments that NATO members have to. Also, if a country wished to join a European defence union without joining NATO, then this would provide an argument for the EU to have its own complete military headquarters structure independent of NATO. Politically, such a move could end the NATO alliance.

The solidarity clause should prove less problematic politically, since it does not have the same scope of military commitments as a European defence union, even if its tasks could have more practical implications for security policy decision-makers. In the aftermath of the Istanbul attacks, the political climate makes it harder to argue against a common commitment to assist another EU member-state in the event of a terrorist attack on its territory. However, agreeing to the solidarity clause now, enhances any future political argument for a mutual defence commitment as well. If non-aligned countries accept that they would help an EU country that has undergone a terrorist attack, then politically it becomes more difficult to have a position not to come to the military help of an EU country that underwent an attack from an external state.

Practically ‘structured co-operation’ will prove more important in terms of influence over EU military missions – especially if the EU agrees to be able to take on more higher-intensity tasks. Those countries participating in ‘structured co-operation’ would form a core group for carrying out EU defence policy decisions. Moreover, if a non-aligned country like Ireland decided to be part of ‘structured co-operation’, this would have major implications for defence spending priorities. This is especially true for Ireland, a country that has traditionally focused more on United Nations peace-support tasks, on very low-levels of defence spending at less than 1 per cent of GDP. Thus, even if Ireland wanted to participate in ‘structured co-operation’, this might require the government to spend more money on defence, and spend it in a certain way. For example countries in the capabilities group might agree that they should spend at least one-third of their defence budgets on research, development and procurement. Domestically, increasing defence spending for the sake of joining an EU defence group will not be a high priority. Thus the criteria for joining the ‘structured co-operation’ defence group will be crucial for determining what influence – if any – a small non-aligned country like Ireland can have over EU defence policy.

The capabilities agency will not create a single European customer for research, development and procurement, but small countries in general should be aware that, in theory, the agency could propose multinational

equipment programmes. From a budgetary perspective, for small countries that are not major defence-goods producer, they should try to ensure that non-European defence companies (especially American) should be able to compete for (on their own or as part of project groups) for multinational programme contracts. Such competition between European and non-European suppliers is one of the best ways of keeping defence equipment prices down. This is even more important at a time when European defence budgets are static.

Thus, Ireland, like other small and non-aligned countries will have to keep a close eye on the details of the criteria for participating in 'structured co-operation', and consider the long-term political implications of a mutual defence commitment in the EU constitution.